

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:98-CR-185-BO-2

EMANUEL L. BARNHARDT,)	
)	
Petitioner,)	
)	
v.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

This matter is before the Court on petitioner's "motion to vacate fine," [DE 108], to which the government has responded, [DE 109]. For the reasons that follow, petitioner's motion is DISMISSED.

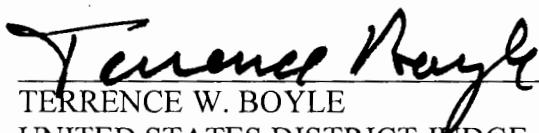
Petitioner's motion does not state the authority under which he challenges the fine portion of his sentence. It is well-settled, however, that relief under 28 U.S.C. § 2255 is not available when a litigant challenges only a fine or restitution order. *United States v. Miller*, 871 F.2d 488, 489–90 (4th Cir. 1990); *United States v. Corcho*, 60 Fed.Appx. 479, 480 (4th Cir. 2003) (per curiam); *United States v. Hudgins*, 201 Fed.Appx. 143, 143 (4th Cir. 2006) (per curiam). Where a defendant only challenges the fine imposed, the district court should treat the claim as a habeas corpus petition under 28 U.S.C. § 2241. *See, e.g., Corcho*, 60 Fed.Appx at 480.

A petition under § 2241, however, must be brought in the district in which the petitioner is incarcerated. 28 U.S.C. § 2241(a). Petitioner is incarcerated at the United States Penitentiary in Waymart, Pennsylvania. Thus, this Court does not have jurisdiction over this proceeding.

This matter is therefore DISMISSED WITHOUT PREJUDICE to petitioner's right to file his action in the appropriate district court.

SO ORDERED.

This, the 11 day of September, 2014


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE